

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

LARRY VALDEZ,

Plaintiff,

vs.

Civ. No. 08-807 MV/GBW

ALBUQUERQUE PUBLIC SCHOOLS,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendant Albuquerque Public School's Objections and Motion to Strike Plaintiff's Initial Disclosures and Defendant's Objection and Motion to Exclude Plaintiff's Experts, filed February 16, 2009 [**Doc. No. 15**].

In its moving papers, Defendant Albuquerque Public Schools first asks this Court to strike Plaintiff's initial disclosures on the basis that they were due to be served on December 9, 2008, but were not served until nine days later, on December 18, 2008. While this Court cautions the litigants that they should adhere strictly to the Federal Rules of Civil Procedure and the Local Rules of this Court, it declines to strike Plaintiff's initial disclosure on the basis of this nine-day delay. Defendant has not even attempted to show that it was prejudiced by this delay, nor could it as much of the information contained in the initial disclosures was also contained in a Joint Status Report that was filed on December 11, 2008—just two days after Plaintiff's initial disclosures were due.

Second, Defendant's moving papers seek to exclude the testimony of three medical providers—Dr. Dennis Walker, Dr. Michael West Cardiology, and Gregory McNeil—on the

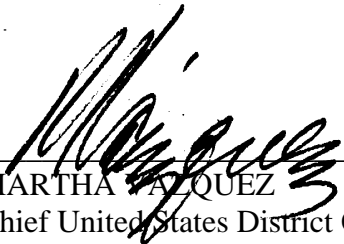
basis that Plaintiff failed to comply with a Scheduling Order that required Plaintiff to designate testifying experts and to provide expert reports pursuant to Federal Rule of Civil Procedure 26(a)(2)(B) no later than January 16, 2009. Defendant acknowledges that Plaintiff's initial disclosures, which were served on December 18, 2008, identified each of these medical providers as treating physicians from whom Plaintiff intended to introduce expert testimony. Defendant argues, however, that this designation is insufficient as it fails to comply with Federal Rule of Civil Procedure 26(a)(2)(B), which requires testifying experts to provide written reports containing *inter alia* specific information regarding their opinions and the basis therefor, as well as their qualifications. Defendant's argument is misplaced. The Local Rules of Civil Procedure of the District Court of New Mexico explicitly provide that "[t]reating physicians need not prepare an expert report" as required by Federal Rule of Civil Procedure 26(a)(2)(B). D.N.M.LR-Civ. 26.3(b). Accordingly, this Court finds that Plaintiff's designation of these witnesses on December 18, 2008—nearly a month before the deadline set in the Scheduling Order—was sufficient. This Court therefore denies Defendant's request to exclude the opinion of these witnesses, as well as Defendant's alternative request that this Court order that these witnesses produce expert reports and give Defendant additional time to file its own expert designations. If Defendant had concerns about rebutting the testimony of these witnesses, its remedy was to seek discovery, not bring this motion the day its own expert designations were due.

Finally, for the first time in its reply brief, Defendant argues that Plaintiff failed to produce the 27 documents listed as "attached" in Plaintiff's initial disclosures. As this argument was first presented in Defendant's reply brief, Plaintiff has not had an opportunity to respond.

Because this argument has not been properly briefed by both parties, this Court will not entertain Defendant's request to strike these attachments at this time. This Court, however, cautions Plaintiff that it will not tolerate the withholding of relevant documents. To the extent that such documents have not been produced, Plaintiff should do so immediately.

IT IS THEREFORE ORDERED that Defendant Albuquerque Public School's Objections and Motion to Strike Plaintiff's Initial Disclosures and Defendant's Objection and Motion to Exclude Plaintiff's Experts [**Doc. No. 15**] is **DENIED**.

DATED this 24th day of September, 2009.



MARTHA A. QUEZ
Chief United States District Court Judge

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